

## OBJECTIVES AND CONSTRAINTS

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### LEGAL AND POLICY MANDATES

67,824 comments. Issues raised in these comments include brucellosis, SMAs, appropriate managers for bison, and others. A vast majority of comments wanted the bison to be managed as wildlife, not as livestock, and most wanted management responsibility to reside with the Department of Fish, Wildlife and Parks and not the Board of Livestock. Several comments alleged that the proposed action violated NPS policies, violated Forest Service Policies, and was in conflict with certain laws of Montana and Wyoming. The policies of APHIS were also questioned. Related comments can be found in ALTERNATIVES/ISSUES - New/Other, NEPA, and CONSULTATION AND COORDINATION.

#### Comment 1

“Clearly, if brucellosis is an issue it must be managed, but a cooperative plan incorporating Montana’s help but managed by the Park Service is the appropriate case.” - Individual, Vincennes, IN, YELL-10.

#### Comment 2

“Re pages 4 and 5 - ‘Objectives and Constraints in Taking Action, overall, the objectives appear to be overly in favor of protecting cattle over bison. Bison, a species which, due to political reasons, has been classified as livestock once it leaves Yellowstone National Park instead of being assigned some level of protected status under the Endangered Species Act.” - Individual, Harrisville, RI, YELL-1006.

#### Comment 3

“By endorsing the Citizen’s Plan you can do just that. At the very least let the wildlife professionals have the final say, not Montana’s Department of Livestock! How can you expect them to have a truly informed and unbiased opinion? Keep politics out of what should be a scientific decision making process.” - Individual, San Francisco, CA, YELL-10097.

#### Comment 4

“...state will have the authority to kill any bison, elk, or any other form of wildlife, healthy or ill, to test for the brucellosis virus.” - Individual, Toledo, OH, YELL-10130.

#### Comment 5

“The buffalo are native to the land. They should have more rights than ranchers and their cows. It is not our government’s responsibility to keep buffalo off of government range land.” - Individual, Kalispell, MT, YELL-10138.

## **Comment 6**

“Lands outside YNP should be reserved for bison because bison are migratory and lands outside YNP represent historical bison ranges. We recognize that bison are nomadic animals and that bison once populated enormous ranges from Texas into Canada and from Kansas and Nebraska to Idaho and Oregon. We would all concede that this vast range was historic bison range. However, the fact that bison once ranged on these lands does not assume that these ranges are still available to bison. The same holds for the lands outside YNP to the west and north of the park. While significant portions of the lands outside YNP are designated as wilderness or wildlife management areas, significant portions of these lands are designated as multiple-use forestlands, or are state or private lands. These lands must not be lightly construed to be essential to the survival of the bison since bison are not endangered and genetically viable populations reside in YNP. The conversion of these lands to preferential use by bison assumes that a number of actions will occur, over which the lead federal agencies lack the jurisdictional authority. Additionally, such actions may place an unreasonable burden on private citizens and other public agencies.” - Organization, U.S. Animal Health Association, YELL-9364.

## **Comment 7**

“This appears to be justification for the second goal included in the “Purpose of Action” - that of insuring the viability of Montana’s livestock industry. However, this is disingenuous, for several reasons. First, APHIS has the authority to subdivide a state in order to classify for brucellosis (Keiter 1997; 9CFR § 78.40). And, in fact, on January 29 and February 7, APHIS officials had informed Montana Governor Racicot that providing the bison with winter range near West Yellowstone would not endanger the state’s brucellosis-free status. Yet. The killing went on. Therefore, even if the greater Yellowstone Area was classified as brucellosis-infected, the rest of the state could very well be classified brucellosis-free. This fact is acknowledged within the DEIS, which reads: ‘States or portions of states are classified according to their rate of brucella infection present in cattle and the general effectiveness of their brucellosis control and eradication program’ (DEIS at 34. emphasis added). Yet, throughout the DEIS there is a supposition that the presence of brucellosis in the GYA will spell collapse for Montana’s entire cattle industry (See, e.g., DEIS at 165). This is false. Further, those counties impacted by the presence of brucellosis in the Yellowstone bison herd, the counties of Gallatin and Park account for only 5% of cattle production in Montana (DEIS at 164). The viability of cattle ranching in Montana is therefore not in jeopardy. Even in the Greater Yellowstone Area, the importance of the viability of the livestock industry to the health of the regional economy can be questioned, as ranching plays a small role in the GYA economy in contrast to recreation and wildlife-related tourism (Keiter 1997).” - Organization, Rocky Mountain Animal Defense, YELL-14700.

## **Comment 8**

“...In this case, the U.S. Forst Service and, specifically the Gallatin National Forest, has consistently and conveniently ducked or avoided any responsibility for the tragic and unnecessary slaughter of Yellowstone’s bison. It continues to claim that it has no responsibility for the

management of Yellowstone bison on its lands because it's role is in the management of habitat while the state wildlife agency is "largely" responsible for managing the wildlife. DEIS at 30. In other words, the Forest Service claims to have virtually no authority over the management of wildlife, except federally protected species, on its lands. This interpretation is in error. Through this authority, the USFS can call into question, and even prohibit, certain wildlife management strategies imposed by the State either with cooperation of the State or by issuing closure orders to prohibit an activity from an area. The National Forest Management Act requires, for example, the USFS to maintain a viable population of native wildlife on its lands...Moreover, despite this legal requirement, the USFS has consistently violated this law by allowing Montana to kill nearly all bison who emigrate onto USFS lands. The few bison who remain do not constitute a viable population." - Business - Schubert and Associates For Fund for Animals, YELL-14714.

## **Comment 9**

"...First and foremost the NPS is obligated by law to ensure that activities that it permits to occur inside of YNP are consistent with its own statutes and regulations. If they are not consistent, then the NPS must eliminate those activities regardless of the consequences to the regional interests. In other words, the NPS is not required to consider the region-wide implications of all of its decisions. Since there is no possible justification for determining that these animals are detrimental to the Park or dangerous – which are the criteria which the Superintendent must use to justify the removal of these animals from the population – the capture, test, and slaughter of these animals is directly in conflict with the NPS Organic Act, Yellowstone's enabling legislation and the Lacey Act. (See Exhibit 9 for a more detailed discussion of this issue). Yellowstone's enabling legislation also clearly prohibits the "capture or destruction" of Park fish and game for the purposes of "merchandise or profit." In this case, the products of bison (i.e., meat, head, hides) taken to slaughter are made available at auction to the highest bidder. The Funds generated by the sale of these products is retained by the Montana Department of Livestock and may constitute a profit depending on the money expended by the MDOL to transport and slaughter each animal. Those purchasing the products may also profit if they elect to resell the products or the merchandise, particularly mounted bison heads or cured hides, at a higher price." - Business, Schubert and Associates For Fund For Animals, YELL-14714.

## **Comment 10**

"A similar shortcoming exists in the discussion of the creation of Special Management Areas (SMA). Throughout the DEIS, statements are made that the creation of SMAs would require the approval of the State of Montana as specified by Montana law. Without confirmation by the state of Montana, any meaningful discussion, analysis, or final decisions regarding SMAs cannot be made. It is difficult for us to understand how the state of Montana, as a full partner in this EIS process, can sign a final Record of Decision that contains recommendations that in themselves will require additional state approval. This leads us to believe that these recommendations, which call for additional state approval, does not meet state law..." - Organization, Jackson Hole Conservation Alliance, YELL-15329.

## **Comment 11**

“...The disease issue is the sole criteria in giving the Department of Livestock managing authority. In the Fund case Judge Lovell ruled ‘...the Park Service can maintain its hands-off policy of bison nonmanagement only so long as it has the cooperation of Montana...’ and in his Supplemental Order of January 28, 1991, Judge Lovell ruled ‘...any healthy animal herd which has reached the capacity of its habitat must be controlled and maintained in numbers within the habitat’s capacity.’ These rulings indicate that the ‘natural regulation’ management policy practiced by YNP does not exempt them from their responsibility of being a good neighbor to the bordering states. In the winter of 1996-97 when so many bison exited, the Park Service did not live up to their cooperative commitment to the long term plan and failed to capture all bison leaving the SMA at Stephens Creek. They also refused to follow the plan and ship all negative bison captured. They were fed and released in the spring...” - Business, Hagenbarth Livestock, YELL-10638

## **Comment 12**

“NPS or the Montana Department of Livestock has no authority to eradicate wildlife. Wildlife are held in the Public Trust. Ranchers should be charged with vaccinating their herds for brucellosis. The ownership of wildlife under common law is a long established tradition in England and the United States. Wild animals, in the proprietary sense, are owned by no one, not even the state. *Clajon Production Corp. v. Petera* 854 F. Supp. 843; *U.S. v. Long Cove Seafood, Inc.* 582 F.2d 159. Wildlife is held in trust for the public. ‘The American common law rule is that the sovereign owns fish and game in trust for its citizens.’ *Mille Lacs Band of Chippewa Indians v. Minnesota* 861 F. Supp. 784. The U.S. Supreme Court has held that states hold wildlife in trust for its citizens for conservation and protection. *Hughes v. Oklahoma*, 441 U.S. 322 (1979).

Moreover, in a case involving a Wyoming rancher whose herd was infected with brucellosis, the court found that the United States Forest Service and the Bureau of Land Management had neither the duty to warn the rancher of potential dangers to his livestock, including threats of brucellosis, nor the responsibility of the well-being of the rancher’s cattle in general. *Parker Land and Cattle Company Inc. v. United States of America*, 796 F. Supp. 477. The court found that the ‘Wyoming Game and Fish Department [had] primary responsibility for managing wildlife...’ *id.* at 480. More importantly, the court found that APHIS and its Uniform Methods and Rules of Brucellosis Eradication (UMR) program had the duty to cooperate with states in managing the disease. But the court specifically found: The UMR was intended to apply only to domestic livestock and cannot be extended to cover wildlife. If the UMR was intended to pertain to wildlife then Wyoming could not have achieved free status [as a brucellosis free state] as the wildlife in the Greater Yellowstone ecosystem are heavily infected. The regulations contained in Title 9 of the Code of Federal Regulations also do not apply to wildlife as it would not be physically possible to regulate wildlife in accordance with these directives. *id.*, at 486...” - Organization, Sinapu, YELL-14540.